

## Mexican Competition Authority Sanctions BorgWarner and REMY Holdings for Gun Jumping

---

Wednesday, February 20, 2019

On January 31, the Board of the Mexican Competition Authority—the Federal Economic Competition Commission (COFECE)—approved REMY Holdings International’s acquisition of BorgWarner’s vehicle aftermarket business. However, the companies failed to file and were fined for their misconduct (~\$153,134). The fine was less severe because the parties voluntarily acknowledged their failure to notify COFECE.

### WHAT HAPPENED:

- On October 3 2016, BorgWarner Inc. (BorgWarner) agreed to sell its REMY light vehicle aftermarket business to an investor group led by Torque Capital Group. The sale included manufacturing facilities in Mexico, US, Belgium, Tunisia and Hungary. The purchase price was approximately \$80 million.
- The deal between BorgWarner and REMY exceeded the thresholds provided in the Federal Economic Competition Law (LFCE), yet COFECE was not notified of the transaction until October 2018.
- Under the LFCE, failure to notify a concentration is considered severe misconduct. The parties’ voluntary acknowledgement of the failure to notify, however, was a mitigating factor in determining the appropriate fine.
- In light of the above, the COFECE fined each party MXN 1,460,800 (~\$75,230).

### WHAT THIS MEANS:

- For transactions having an impact in the Mexican territory, it is advisable to verify whether a COFECE filing is required. While the fines in this matter were limited, COFECE fines can be very significant.
- Failure to notify a concentration can be fined with up to five percent of the parties’ turnover.
- In addition, the COFECE will analyze the impact of the transaction. If the COFECE finds that the transaction harms competition, the transaction will be deemed illicit and the parties may face additional fines of up to eight percent of their turnover.
- In determining the amount of the fines, the COFECE will consider mitigating circumstances, such as the parties’ voluntary recognition of the infringement.
- This decision is another example of the importance of performing an international antitrust filing assessment (often referred to as a multi-jurisdiction assessment or “Multi-J”) in all transactions having an international component. Antitrust agencies worldwide are increasing their focus on failures to notify and gun jumping generally. Last July, the Australian Competition and Consumer Commission brought its first ever gun jumping case against Cryosite and Cell Care Australia. Similarly, in April, the European Commission imposed a record fine of EUR 124.5 million on Altice for implementing its acquisition of PT Portugal before notification or approval by the Commission.

*Sara Fernandez, a visiting international attorney in the Washington, DC office, also contributed to this post.*

© 2019 McDermott Will & Emery



Article By [Gregory E. Heltzer](#)  
[Caroline Ruiz Palmer](#)  
[McDermott Will & Emery Antitrust Alert](#)

[Antitrust & Trade Regulation](#)  
[Global](#)  
[Mexico](#)

**Source URL:** <https://www.natlawreview.com/article/mexican-competition-authority-sanctions-borgwarner-and-remy-holdings-gun-jumping>